

**CONSOLIDATION COMMITTEE  
P.O. BOX 71114  
FAIRBANKS, AK. 99707**

**REPLY BRIEF  
SECTION 2**

**Reply Brief to the Responsive Brief filed by the City of Fairbanks to the Local Boundary Commission on July 28, 2000.**

The Petitioners will reply to the several issues raised by the City of Fairbanks in their numbers I. through VII. and respond to the Affidavit of James C. Hayes. We will not repeat the city's statements, just reply to the numbered or lettered heading.

**I. Summary.**

**Reply:** City of Fairbanks residents are presently supporting two local governments that essentially have the same powers in providing local services to their residents. The existing city "home rule powers" will not change as a service area. Any desired new service area power can be provided by a Second Class Borough through a vote of the service area residents.

The Unification of the Boroughs of Anchorage, Sitka and Juneau did not deny the residents local control. Those same residents still elect their Mayor and Assembly.

The Consolidation Petition does not call for a paid management staff to replace the city mayor; rather the petition pre-supposes the new service area will be managed by the new Municipal Mayor as in the unified communities.

Should the new Municipality of Fairbanks desire "Home Rule" status in the future, either the Municipality or the voters can initiate the necessary procedures under Title 29 of the Alaska Statutes.

**II. Review of the Consolidation Petition.**

**Reply:** It was the decision of the Consolidation Committee to leave the City of North Pole out of the consolidation due to North Pole objections to previous attempts at consolidation and unification.

(The balance of II. is essentially responded to in the Petitioners response to I. Above)

**II. Local government in Alaska.**

**Reply:** Contrary to the City's Brief, that infers, by selective quotes, the framers of our constitution intended that cities within boroughs would co-exist forever, the constitutional convention delegates who designed Alaska's system of local government

considered a borough government without cities to be the optimum form of local government. (Attachment 1. DCRA letter to Donna Gilbert, Page 7, last paragraph)

#### **IV. Role of the Local Boundary Commission.**

This statement by the City of Fairbanks inferred the Petitioners are a small, self-interested group with a mere existence of a petition signed by a small percentage of voters over a two year period and the petition's proposal may not be sound government.

**Reply:** The Petitioners represent over 4000 registered voters within the Fairbanks North Star Borough and unpaid volunteer public-spirited citizens gathered those signatures over a 17-month period. The Petition was based on standards and principals of sound government contained in other consolidation and unification proposals in conformity to the unique features of Fairbanks local government. The Petition was designed to make as little change as necessary in providing more efficient, responsive and effective local government for a growing community.

#### **V. Distinctions between Unification, Consolidation and Merger.**

**Reply:** The city states the proposed consolidation of the City of Fairbanks and the Fairbanks North Star Borough, without including the City of North Pole, is not consistent (whatever that means). We have no response to a city questioning the Alaska Statutes that allow citizens to petition their government to consolidate two of the three municipalities (as also proposed in the Ketchikan Consolidation Petition).

#### **VI. The Consolidation Petition should be denied.**

##### **A. The Petition does not meet constitutional standards.**

**Reply: Article X, Section 1. Purpose and Construction.** This section is clear and should have no misinterpretation as implied by the City of Fairbanks. The section reads "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, **and to prevent duplication of tax-levying jurisdictions.** A liberal construction shall be given to the powers of local government units". (Emphasis added.)

##### **B. The Petition does not meet statutory requirements.**

**Reply:** The City is grasping at straws in stating the existing borough is not interrelated and integrated as to its social, cultural, and economic activities. The borough contains the University of Alaska, the International Airport, major hotels, industrial complexes and houses 66 % of the areas population with service areas that provide water & sewer, street lighting, fire protection, refuse collection, snow removal & road maintenance. In addition, the borough provides parks and recreation, libraries, a transportation system, air pollution control, property assessment and tax collection, disaster and civil defense, planning, zoning, and

plating, animal control, flood control, child care assistance, limited health and social services, enhanced 911 system, fireworks control, emergency medical services and economic development.

**C. The Petition does not meet regulatory requirements.**

**Reply:** The Consolidation Petition does meet regulatory requirements. The City is questioning the effect of the proposed 10-mill tax cap that is already under litigation even before the possible vote on the subject. It is noted the Attorney General stated the proposed initiative is subject to litigation both before and after it's possible passage so we don't know the eventual outcome. We note the Unified Municipality of the City and Borough of Juneau, providing area-wide police, fire etc. has a low mill rate of 12.2 accomplished through a sales tax. The Fairbanks North Star Borough has a planning committee investigating several avenues including a sales tax to retain present services should the tax cap initiative pass. Prior to wealth from the oil industry, both the city and borough had a sales tax and perhaps they will have to re-implement that tax to continue providing existing services.

**D. The Petition is not in the “best interests of the State.”**

**Reply:** The City of Fairbanks cites the Valley Borough proposal as support for its case wherein the City of Nenana was opted out of the proposed borough. The exclusion of Nenana was somewhat due to distances between communities and the potential that “inclusion of the city could result in voters rejection” of the ballot issue. The Fairbanks consolidation issue is entirely different than the Valley proposal, wherein the City of Fairbanks is already in the Borough; in fact the Fairbanks City Hall is just ½ mile from the Borough Administration building. The Consolidation Petition correctly states the city and borough are socially, culturally and philosophically cohesive. Most residents in the borough routinely call Fairbanks “home”, regardless where they live in the borough.

The City statement that voters have rejected efforts to combine the two units of government is not correct. Consolidation of the City of Fairbanks and the Fairbanks North Star Borough has never been a ballot issue in the borough. The borough voters rejected a unification charter in 1973 and rejected the election of a charter commission in 1987.

**E. Consolidation would deny City residents the type of government they have chosen.**

**Reply:** The City residents will have a vote on the question of consolidation.

1. There are some savings in consolidation of the City and Borough; the Consolidation Committee has submitted an updated consolidation budget with the Reply Brief to the Borough's Responsive Brief.

2. The “Urban” Service Area is just a name given to the new service area (formerly the City of Fairbanks) This service area is just as viable and workable as any other service area established in the existing borough, under previous unification’s in the State and as proposed in the several consolidation petitions before the LBC.
3. The Trust for the City Permanent Fund will be submitted in the Petitioners Reply Brief to the Fairbanks North Star Responsive Brief.
4. The new municipality assembly, as proposed in the Consolidation Petition, is not restricted from continuing present use of the (City) Bed Tax.
5. This statement is correct that the new municipality would not be able to adopt a permanent tax cap and we think this is a plus.
6. The statement the new municipality would not have term limits is correct.
7. The statement that the new municipality could expand boundaries without giving new areas “controlling” vote is correct.
8. The Ten Mill Tax Cap, if passed, will have an effect on the existing borough regardless of consolidation. As noted elsewhere, the borough has a commission investigating various tax options. This Consolidation Petition was presented to the LBC prior to the Tax Cap Initiative. Both the City of Fairbanks and the Fairbanks North Star Borough are responsible for planning revenues and expenditures and we await their decision on how to cope with the tax cap if passed. The Consolidation Petition does not attempt to, nor could it, answer all future borough revenue and expenditure problems.
9. The Consolidation specifically states “The new Municipality will inherit the existing union contracts and shall continue to be governed under the Public Employees Relations Act, AS 23.40”.
10. No comment.
11. No comment.
12. No comment.
13. Any proceeds, if any, from the Techite Pipe settlement were not addressed in the Consolidation Petition, however such proceeds can be designated for the use and benefit of the new Urban Service area in the same manner as the Permanent Fund.

**F. The City and Borough reflect different governmental philosophies.**

**Reply:** The situation in Fairbanks is not radically different than other communities that have either unified or considered consolidation. Regardless of the City’s statements, the Borough presently provides all the services of the city with the exception of police and building inspection by service district and provides many other services both area-wide and non area-wide previously

operated by the city including parks and recreation, schools, library, planning and zoning, assessment & tax collection.

**G. Significant operational savings from consolidation should not be expected.**

**Reply:** The Consolidation initially forecast savings of approximately two million dollars, however a detailed consolidation budget analysis of the City's operations as submitted with the Petitioners Reply Brief to the Fairbanks North Star Responsive Brief details serious problems within the City that require administrative support staff in the consolidated municipality.

**H. The Petition's 3-year budget is out-of-date and inadequate.**

**Reply:** The Petitioners are submitting a new 39-page consolidation budget as noted above.

**VII. Conclusion.**

**Reply:** The City has just repeated issues previous raised and responded to. We sincerely believe the Consolidation Petition as presented meets the standards of the Alaska Constitution that allows the issue to go forward. We note the City used selective quotes from individuals, from legal decisions, from other communities in order to make their point and justify the opposition to an issue wherein they should have been a leader.

**Affidavit of James C. Hayes**

**Reply:** Mayor Hayes in numbers 1-27. recites his interpretation of the existing city functions, all of which can easily be operated as a service district as proposed by the Consolidation Petition. Obviously, the City of Anchorage had similar functions when that community unified and the new municipality accomplished the transition with far larger problems than the proposed consolidation poses to community leaders.

#28. The Mayor is correct, we did meet with him and he assured us that the City would cooperate.

#29. In developing the Consolidation Petition, the Petitioners had planned to meet with city department heads and with the City Council on the transition plan portion of the consolidation petition. The Petitioners, however, found most of the required information from public records and discussed the transition plan with some city personnel by phone or visit where questions arose. When we became aware of some City hostility toward the Consolidation Petition we provided Mayor Hayes with a draft copy of the full Petition requesting a City review for correction and constructive criticism on any portion of the plan, especially the

transition portion. We received absolutely no reply to our request for city review. A copy of our letter to Mayor Hayes is attached as Exhibit A.

Following two complaints we had not met with all city officials, the Petitioners' Representative met with the Fairbanks City Council on September 27, 1999 and reiterated willingness to meet with the City Council or Department heads so any necessary corrections could be presented for consideration by the Local Boundary Commission (Exhibit B). No City request was received except the letter from the City Attorney's Office on June 6, 2000 and addressed in #30 below.

#30. The City Attorney's office sent the Petitioners a letter requesting information (Exhibit C) and the Petitioners Representative replied the City should consolidate their questions in response to the Public Notice (Exhibit D). A meeting with the Mayor was requested and the Petitioners Representative explained why he would not respond to a letter from the City Attorney Office. The Mayor was told his City Attorney had called Dan Bockhorst, Staff for the Local Boundary Commission, and had threatened to file a criminal complaint against the Petitioners' Representative if he signs the Consolidation Petition under oath, since he had not met with all department heads as stated in the Petition. The Mayor said he was not aware of the City Attorneys action.

#31. No comment.

**It should be noted by the Local Boundary Commission, that in contrast to the consolidation petitions submitted by the officials of Haines and Ketchikan, the City of Fairbanks in their Responsive Brief, could not or would not even suggest one favorable or positive comment on the entire consolidation petition.**

This completes the Reply Brief to the City of Fairbanks Responsive Brief

DEPARTMENT OF COMMUNITY AND  
REGIONAL AFFAIRS

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January 14, 1999

Ms. Donna Gilbert  
President  
Interior Taxpayers' Association, Inc.  
P.O. Box 71892  
Fairbanks, Alaska 99707

Dear Ms. Gilbert:

Thank you for your letter of January 5 concerning the prospective petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough.

Occasionally, individuals will engage in ex parte communication with the Local Boundary Commission as you did by sending a copy of your January 5 letter directly to the members of the Commission. Laws governing that quasi-judicial body prohibit communication with the Local Boundary Commission concerning pending petitions, except through this office or with the Commission directly at a duly convened public meeting (see 19 AAC 10.500(b)). The Commission Chairman and other members of the Commission have asked us to request that you refrain from future direct communication with members of the Commission concerning this matter except under circumstances allowed by 19 AAC 10.500(b). Your cooperation in that regard will be appreciated.

Regarding the four concerns you raised in your letter, we offer the following response.

**1. ALLEGATION OF INSUFFICIENT SIGNATURES BEING COLLECTED.**

You interpret the law to require the petition to be signed by 1,309 voters of the City of Fairbanks (based on 25% of 5,236 votes cast in the last regular election of the City of Fairbanks). You assert that the petition must also be signed by an

additional 3,519 individuals that you termed "borough voters." (based on 25% of 14,075 votes cast in the last regular Borough election).

State Statutes, AS 29.06.100(a), require that a petition for consolidation "must be signed by a number of voters of each existing municipality equal to at least 25 percent of the number of votes cast in each municipality's last regular election." Of course, voters of a city within a borough are also borough voters. The Local Boundary Commission has interpreted AS 29.06.100(a) by adopting 19 AAC 10.410(b) which provides as follows:

If a statute requires that the petition be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition.

Consequently, it is our interpretation that the Fairbanks consolidation petition must be signed by a number of voters: (1) of the City of Fairbanks equal to at least 25 percent of the number of votes cast in the City of Fairbanks' last regular election; and (2) of that portion of the Fairbanks North Star Borough outside the City of Fairbanks equal to at least 25 percent of the number of votes cast in that area in the Borough's last regular election.

The Fairbanks North Star Borough Clerk's office has advised us that 13,725 votes were cast in the last regular election of the Borough, 5,236 of which were cast by residents of the City of Fairbanks. Your figure of 14,075 appears to be incorrect. The difference between your figure and the one provided by the Borough Clerk's office is 350. That is identical to the number of votes cast in the last regular Borough election by residents of the City of North Pole. Perhaps those votes were counted twice in your tally.

The City Clerk's office of the City of Fairbanks advised us that 5,236 votes were cast in the City of Fairbanks' last regular election.

Based on the above, we interpret AS 29.06.100(a) and 19 AAC 10.410(b) to require at least 1,309 voters of the City of Fairbanks and 2,123 voters of the remainder of the Fairbanks North Star Borough on the consolidation petition. Our figure of the total number of signatures required agrees with the number reportedly arrived at by Mr. Lowell.



## **2. ALLEGED LACK OF CONSULTATION WITH CITY ON TRANSITION PLAN.**

You allege that the petitioners failed to adequately consult with appropriate officials of the City of Fairbanks in the development of the transition plan required by 19 AAC 10.900.

At this time, we lack sufficient information to make judgments regarding your allegations. In our several discussions with Mr. Lowell prior to the development of the petition, we stressed the importance of proper consultation with officials of both the City of Fairbanks and the Fairbanks North Star Borough.

Several weeks ago, concerns similar to yours were raised by Herb Kuss, City Attorney for the City of Fairbanks. We immediately contacted Mr. Lowell to advise him of the concerns expressed by Mr. Kuss. Mr. Lowell assured us that he had consulted with appropriate officials of the City of Fairbanks. Nonetheless, we urged Mr. Lowell at that time to contact Mr. Kuss to discuss the matter.

We continue to support proper consultation by the petitioners with officials of the City of Fairbanks. If this has not yet occurred, there is still opportunity to do so as the petition proceeds. By copy of this letter to Mr. Lowell, we again urge him to contact officials of the City of Fairbanks to address this matter in the event he has not yet contacted them.

## **3. ASSETS RESERVED IN TRUST FOR DISSOLVED ENTITY.**

You express concern over elements on page six of the transition plan which provide as follows:

The assets of the city, except the permanent fund, shall transfer to the consolidated municipality. The assets of the permanent fund shall transfer to a trust for the benefit of and use by the Urban Service Area. The trust shall be established by the assembly in a manner consistent with current provisions governing the state permanent fund.

You are concerned that the transition plan seems to call for the City's permanent fund to be withheld from the proposed consolidated borough. You note that such would violate AS 29.06.150 which provides that the consolidated municipality will succeed to all assets of the dissolved municipalities.

State law is not ambiguous on this point. Clearly, the consolidated borough government would succeed to the City of Fairbanks' permanent fund.

While we believe that the matter warrants clarification on the part of the petitioners, we anticipate that this particular element of the transition plan was simply worded poorly. Most likely, the two sentences of concern to you were intended to stress the intention that the permanent fund would be reserved for the benefit of the proposed Urban Service Area (former City of Fairbanks). Your interpretation that the plan calls for the permanent fund to be withheld from the borough altogether is incongruous with the sentence in the transition plan providing that "The trust shall be established by the assembly . . ." (emphasis added). If the permanent fund were not an asset of the consolidated borough, the assembly could not establish the trust for the fund.

From our previous discussions with the petitioners' representative, it is our understanding that the proposed trust is envisioned to be patterned after one to be established by the Municipality of Anchorage to receive the proceeds from the pending sale of the Anchorage Telephone Utility. Of course, the trust established from the sale of the telephone utility will remain an asset of the Municipality of Anchorage.

The bottom line is that the transition plan is intended to demonstrate to the Local Boundary Commission that a practical plan exists for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by the local governments in question. The transition plan included with the petition is not binding on the assembly. It could not require the assembly to perform an illegal act.

While the issue you raise warrants clarification on the part of the petitioners, we do not believe that any ambiguity concerning the transition plan creates critical defects in the petition. There are multiple opportunities to resolve any uncertainty over this and other issues prior to a vote on the matter. Further, 19 AAC 10.900(d) allows the Commission to require a formal agreement among affected municipalities concerning transition matters.

#### **4. TURNING A HOME RULE CITY INTO A SERVICE AREA OF A SECOND CLASS BOROUGH.**

Your final point addresses two separate concerns. The first is whether a service area of a second class borough has the capacity to carry out services currently being provided by a home rule city. The second is whether a new service area can legally be created where services are currently being provided by a city government. These two issues are addressed separately as follows.

A. Whether a service area of a general law borough has the capacity to carry out services currently being provided by a home rule city.

We recognize that the City of Fairbanks is a home rule city government. As such, it has the authority to exercise all legislative powers not prohibited by law or charter (Article X, § 11, Ak. Const.).

However, we cannot accept your categorical statement that "this petition seeks to turn a home rule city into a service area of a second class borough, with powers that the borough cannot even exercise" (emphasis added). AS 29.35.490 provides that "A second class borough may exercise in a service area any power granted a first class city by law or a nonareawide power that may be exercised by a first class borough" if the power is acquired in accordance with AS 29.35.490(a)(1) or (2).

AS 29.35.200(a) provides that, "A first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law" (emphasis added). Further, AS 29.35.250 provides that, "A city inside a borough may exercise any power not otherwise prohibited by law" (emphasis added). Thus, the legislature has granted a second class borough the virtual equivalent of home rule powers in a service area, as long as those powers are obtained in accordance with AS 29.35.490(a)(1) or (2).

Our view of the home rule-like powers available to a second class borough is supported by the following constitutional and statutory provisions:

- ◆ Article X, § 1. Purpose and Construction. "... A liberal construction shall be given to the powers of local government units."
- ◆ AS 29.35.400. General construction. "A liberal construction shall be given to all powers and functions of a municipality conferred in this title."
- ◆ AS 29.35.410. Extent of powers. "Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title."
- ◆ AS 29.35.420. Enumeration of powers. "Specific examples in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function."

Beyond the issue of the general authority of a second class borough to exercise home rule-like powers in a service area, we are unclear as to what specific powers the City of Fairbanks now exercises that requires home rule status. The consolidation petition states that the proposed Urban Service Area will take on

the powers of fire protection, law enforcement, environmental services, building department, engineering department, and public works department – services currently provided by the City of Fairbanks. Those are routine powers commonly exercised by general law municipal governments throughout Alaska.

If you would care to be more specific in your assertion that the proposed second class consolidated borough would be unable to exercise the powers listed above on a service area basis, we may be able to offer additional comments on this issue.

B. Whether a new service area can legally be created where services are being provided by an incorporated city.

You state that creating a new service area to replace an existing city government, as proposed by the consolidation petition, would violate AS 29.35.450(b) which states:

(b) A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Article X, § 5 of Alaska's constitution provides similar language. In part, it reads:

A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

In our view, the key to the proper interpretation of those two provisions is the phrase found in each, "consistent with the purposes of" Article X. The purposes of Article X, formally stated in §1, are "to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions."

If a service area takes on the same responsibilities as a city government, it does not create more local government units. In the case you cite in your letter, Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995), the Alaska Supreme Court seemed to be concerned with the prospect of proliferation of numerous single-purpose or limited-purpose service areas as opposed to incorporation of a city government with broad powers. Service areas need not be of that character. As envisioned in the Fairbanks consolidation proposal, a

single service area would take on all of the powers of the City of Fairbanks. In the future, new powers could be added to that existing service area.

We believe that City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska 1971), provides relevant additional insights into this issue. In 1970, the City of Juneau, the City of Douglas, and the Greater Juneau Borough dissolved and the City and Borough of Juneau was formed. Section 16.10 of the unification charter provided, "... The areas of the former cities of Douglas and Juneau shall each comprise a service area."

The City of Douglas challenged the unification, claiming among other things, that unification is barred by an implied constitutional requirement that cities not be dissolved in favor of boroughs. The court ruled in that regard that:

Unification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units. Article X, section 2 merely authorizes but does not require the coexistence of cities and boroughs.

Your interpretation that the statutory and constitutional provisions in question prohibit the creation of a service area to replace a city government would seem to prevent any unification or city/borough consolidation in Alaska. There have been three successful unifications involving local governments in Alaska. In addition to Juneau, unification occurred with respect to local governments in Anchorage and Sitka. In every case, service areas were established to replace city governments in existence prior to unification.

Similarly, the practice of dissolving cities and replacing them with service areas has been consistently adopted in the case of city/borough consolidation proposals. It was used in the case in the recent unsuccessful effort to consolidate the City of Haines and the Haines Borough. The same approach is being used in the draft petition for consolidation of local governments in Ketchikan. Of course, the same method is used in the Fairbanks consolidation proposal.

In its decision to approve the petition for consolidation of local governments in Haines, the Local Boundary Commission formally concluded that:

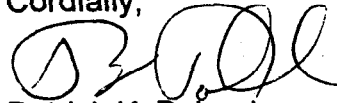
As was noted by DCRA in its preliminary report (pages 21-24), the constitutional convention delegates who designed Alaska's system of local government considered a borough government without cities to be the optimum form of local government. See: Decisional Statement in the Matter of the March 31, 1998 Petition for

consolidation of the City of Haines and the Haines Borough, page  
4, Local Boundary Commission (August 21, 1998).

I have attached the four-page discussion to which the Commission referred in making the statement above. In summary, we believe that the constitution favors unification and consolidation. We cannot accept a rigid interpretation of AS 29.35.450(b) and Article X, § 5 which would likely preclude any unification or consolidation.

In conclusion, we sincerely thank you for your interest in this important issue. At your request, we will ensure that the Interior Taxpayers' Association, Inc., receives notice of filing of the petition and other proceedings concerning this matter.

Cordially,



Patrick K. Poland  
Director

enclosure: pages 21-24 of DCRA's preliminary report on consolidation of local governments in Haines

cc (with copy of January 5 letter from Ms. Gilbert)

: Kevin Waring, Chairman, Local Boundary Commission  
Kathleen Wasserman, Vice-Chairman, Local Boundary Commission  
Nancy Cannington, Local Boundary Commission  
Allan Tesche, Local Boundary Commission  
William Walters, Local Boundary Commission  
Hank Hove, Mayor, Fairbanks North Star Borough  
James Hayes, Mayor, City of Fairbanks  
Don Lowell, Petitioners' Representative  
Marjorie Vandor, Assistant Attorney General  
Ardith Lynch, Fairbanks North Star Borough Attorney  
Herb Kuss, City of Fairbanks Attorney  
Mona Lisa Drexler, Fairbanks North Star Borough Clerk  
Nancy DeLeon, City of Fairbanks Clerk

Consolidation Committee  
P. O. Box 71114  
Fairbanks, AK. 99707

August 9, 1998

James C. Hayes, Mayor  
City of Fairbanks  
809 Cushman Street  
Fairbanks, AK. 99701

Dear Mayor Hayes:

Enclosed, for your review is a draft copy of the "Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough".

By previous agreement, members of the Consolidation Committee have met or conferred by telephone with various members of your staff in developing this draft petition. At this time I am requesting an informal review of the petition to assure information relating to the City of Fairbanks powers and services are correct. We would also appreciate any constructive criticism on any portion of the petition, especially Exhibit I, the Transition Plan, where our goal is to provide a guide on merging the two governing bodies.

The city and borough will have ample time for formal comment on the petition after the required signatures are obtained and the petition is submitted to the Department of Community and Regional Affairs. In addition the Local Boundary Commission will hold public hearings on the petition following the public comment period. A copy of the Department of Community and Regional Affairs guide on "Procedures for Consolidation and Merger" is attached.

Your early response would be appreciated.

Sincerely,

Don Lowell, Chair

cc: Department of Community and Regional Affairs

## **CONSOLIDATION BRIEFING TO THE FAIRBANKS CITY COUNCIL**

**September 27, 1999**

**My name is Don Lowell and I reside at 1324 Old Richardson highway. I am the Petitioner's Representative for the Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough.**

**In developing the Consolidation Plan we met with both the Borough and City Mayors seeking permission to meet with appropriate officials and staff as necessary in preparing exhibits, projections and other details of the petition. Both mayors gave us that permission. In the months that followed we obtained most of the petition-detailed data, including information in the transition plan from public documents and from city & borough staff.**

**A draft copy of the Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough was presented to both Mayors on August 9 of last year with a request for review of the petition. We requested constructive criticism on any portion of the plan and in particular the transition portion of the plan that provides guidance on merging the two governments. Borough management responded with several pages of suggestions and corrections. A second draft of the petition was again reviewed by the borough and additional corrections made. The City of Fairbanks did not respond to our request for review and so we considered the portion that dealt with the city was correct. The Department of Community and Regional Affairs also reviewed a draft copy of the Consolidation plan and their recommendations were incorporated in the final plan. The final plan was provided to the city and borough clerks in November.**

**The reason I am here tonight is that I have received two complaints that the consolidation committee did not met with the council and all city department heads in developing the transition portion of the plan. While we found meeting with everyone was not necessary, we are still willing to meet with the City Council or any city official in resolving questions concerning the transition plan or any other portion of the consolidation petition prior to completing petition requirements. If we have made any errors or we need to expand on any portion of the plan we can include that information in our presentation when the Local Boundary Commission holds hearings on the Consolidation Plan next year. I can be contacted at my home phone number 488-2879.**





## CITY OF FAIRBANKS

*Office of the City Attorney*

800 CUSHMAN STREET  
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OFFICE: 907-459-6750

June 6, 2000

Don Lowell, Chair  
Consolidation Committee  
P.O. Box 71114  
Fairbanks, Alaska 99709

**RE: Consolidation Petition Questions**

Dear Mr. Lowell:

The City is reviewing the Consolidation Petition. Several questions have immediately come to mind on matters which the Consolidation Committee may have studied and considered:


1. A.S. 29.06.150(b) provides that upon consolidation, the new municipality succeeds to the "rights, powers, duties, assets, and liabilities" of the municipalities that existed prior to consolidation. The Petition does not address how the proposed new borough, the "Municipality of Fairbanks," would exercise the police, fire protection, building code, road maintenance, and solid waste collection services that it would possess. The Petition does not address expansion of these services in the future. Under current law, these powers could be extended beyond the current City boundaries without an area-wide vote. *See, Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage* 927 P.2d 728, (Alaska 1996). (Supreme Court upheld Anchorage's expansion of police service area by abolishing its old service area and creating new service area that included new area that had previously voted against expansion, without giving residents of that area separate vote on the expansion.)
2. We are not familiar with the term "Urban Service Area" as used in the Petition. How does an "Urban Service Area" differ in powers, duty or function from a Service Area under state and borough law?

Don Lowell  
RE: Proposed Municipal Consolidation  
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3. The Petition<sup>1</sup> indicates that "the assets of the [City] Permanent Fund will transfer to a trust reserved for the benefit and use of the new Urban Service Area." In a legal trust, property is held by a trustee for the benefit of a beneficiary. Service Areas have no independent legal existence and Service Area residents have no right to elect Service Area Commissioners or control operations.<sup>2</sup> What authority exists to provide that an Urban Service Area can be the beneficiary of a trust? What provision of law would prevent the proposed new municipality from spending the Permanent Fund contrary to the wishes of the Urban Service Area residents?
4. Has the Committee considered the effect of passage of the proposed 10 mill maximum property tax levy Initiative on the operations of the proposed new Borough?

We look forward to discussing these and other issues. Give me a call at your convenience.

Sincerely,



Patrick B. Cole,  
Deputy City Attorney

cc: James C. Hayes, City Mayor

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<sup>1</sup> Page 1, Exhibit "H" of the Petition.

<sup>2</sup> As former Borough Attorney Jim Nordale frequently noted, service areas are like the "fingernails" of the borough – controlled by the borough and used as the borough sees fit, but with no life of their own. Put in legal terms, a "Service area" is a specific geographical area within which municipal services are furnished by a borough, but service areas have no corporate status or right to sue under any statute. , *North Kenai Peninsula Road Maintenance Service Area v. Kenai Peninsula Borough*, 850 P.2d 636 (Alaska 1993).

**CONSOLIDATION COMMITTEE  
P.O. BOX 71114  
FAIRBANKS, AK. 99707**

June 10, 2000

James C. Hayes, Mayor  
City of Fairbanks  
800 Cushman Street  
Fairbanks, AK. 99701

Dear Mayor Hayes:

We are in receipt of a letter from the City Attorney's office, dated June 6, 2000 referencing Consolidation Petition questions. The letter in addition to questions, lists Petition deficiencies, quotes legal references, expresses unfamiliarity with the Alaska Statutes and the Alaska Constitution governing consolidation and asks a question on a proposed tax initiative that is not a part of our Petition.

We have provided your office with a copy of the Public Notice that spells out the legal criteria governing consolidation within the Alaska Statutes and the Alaska Constitution. Your legal department should have these documents and if not, this information is contained in a notebook alongside the Consolidation Petition at the Noel Wien Library.

In order to avoid duplication and extra correspondence, we prefer the Mayor assemble the City Council and your staff's questions and submit a responsive brief for or in opposition of the Consolidation proposal to the Local Boundary Commission in accordance with the Public Notice. Thereafter the Consolidation Committee will respond to your brief and Consolidation questions.

Prior to submitting your brief, you may wish to confer with Ketchikan City officials who recently petitioned the Local Boundary Commission to Consolidate the City of Ketchikan and the Ketchikan Gateway Borough. They cite many advantages Consolidation offers that the City of Fairbanks should consider.

Sincerely,

Don Lowell, Petitioners' Representative